

REMARKS / ARGUMENTS

The present application includes pending claims 1-42, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1, 6-9, 12-15, 20-23, 26-29, 34-37 and 40-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chandrashekhar et al. (US Pub. No. 20030140131, hereinafter, "Chandrashekhar") in view of Giniger et al., (US Pat. No. 6,751,729, hereinafter "Giniger"), and further in view of Weatherspoon et al. (US Patent No. 7,174,564, hereinafter "Weatherspoon").

Claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chandrashekhar, Giniger and Weatherspoon, and further in view of He et al. (U.S. Pat. No. 6,088,451, hereinafter "He et al."). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

I. Examiner's Response to Arguments

At page 2 of the Office Action dated 11/12/2008, the Examiner withdrew the rejections of claims 1, 15, and 29 under 35 U.S.C. 103(a) as being unpatentable by Chandrashekhar in view of Giniger, and conceded that Chandrashekhar, alone

or in combination with Giniger, does not disclose at least the limitation of "hosting said communication session over a third PHY channel, said third PHY channel established between said access point and said originating access device," as recited by the Applicant in independent claims 1, 15, and 29.

The Examiner has introduced Weatherspoon to teach the deficiencies of Chandrashekhar and Giniger. Specifically, the Examiner states the following:

"The Weatherspoon prior art discloses a **first channel for authentication initiation** (request). (see Weatherspoon col. 4, lines 23-29: plurality of APs and corresponding devices; col. 4, lines 32-37: establishes a communications channel) And, the Weatherspoon prior art discloses a **second channel for authentication information**. (see Weatherspoon col. 5, lines 12-19: if the wireless device is valid **the AP establishes a control channel with the authentication server**; transmits encrypted authentication messages that includes operator's logon name and password) In addition, the Weatherspoon prior art discloses a **third channel for hosting (data transfers)** a communications session. (see Weatherspoon col. 5, lines 29-37: authentication server validates both the AP and operator, authentication server will **enable access to the wired LAN**)"

See page 6 of the Office Action (emphasis added). The Examiner relies for support in Weatherspoon's Fig.2, and equates the wireless device 106 to the claimed "originating access device", and the AP 102A to the claimed 'access point". The Examiner equates the air channel 114 (step 302) between the wireless device 106 and the AP 102A to the claimed "first PHY channel of an access point" established with "an originating access device". The Examiner also equates establishing the control channel 112 **between the AP 102A and the authentication server 110** (step 326) to the claimed "authenticating said

originating access device using a second PHY channel”.

The Applicant respectfully disagrees, and points out that Weatherspoon, in step 326, clearly discloses that the establishment of the control channel 112 (i.e., the alleged “second PHY channel”) is between the AP 102A and the authentication server 110, and **not** between the AP 102A and the wireless device 106A (i.e., the alleged “originating access device”). In this regard, the Applicant maintains that Weatherspoon does not overcome the deficiencies of Chandrashekhar and Giniger by disclosing or suggesting the claimed “**authenticating said originating access device using a second PHY channel,**” as alleged by the Examiner.

In addition, the Examiner seems to equate Weatherspoon’s AP 102A enabled access to the wired LAN 120 by the authentication server 110 (step 336) to the claimed “hosting said communication session over a third PHY channel”. However, the Applicant points out that Weatherspoon clearly discloses, in step 326, that the enabled access to wired LAN 120 (i.e., the alleged third PHY channel” is established between the AP 102A and the wired LAN 120 (see Weatherspoon col. 5, lines 29-37), and **not** between the AP 102A and the wireless device 106A (i.e., the alleged “originating access device”).

In this regard, the Applicant maintains that Weatherspoon does not overcome the deficiencies of Chandrashekhar and Giniger by disclosing or suggesting the claimed “said third PHY channel established between said access point and said originating access device,” as alleged by the Examiner.

Therefore, based on the foregoing arguments, the Applicant maintains that Weatherspoon does not overcome the deficiencies of Chandrashekhar and Giniger and a *prima facie* case of obviousness has not been established by the combination of Chandrashekhar, Giniger and Weatherspoon to reject the Applicant's claim 1. The Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. 103(a) be withdrawn. Likewise, independent claims 15 and 29 are submitted to be allowable for the same rationale of independent claim 1.

II. Rejection Under 35 U.S.C. § 103(a)

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results

Application No. 10/658,310
Reply to Office Action of November 12, 2008

would have been predictable to one of ordinary skill in the art” (citing KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (2007)). Additionally, if a prima facie case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

A. The Proposed Combination of Chandrashekhar, Giniger and Weatherspoon does not make claims 1, 15 and 29 unpatentable

The Applicant first turns to the rejection of claims 1, 15, and 29 under 35 U.S.C. 103(a) as being unpatentable over Chandrashekhar and Giniger in view of Weatherspoon.

A(1). Rejection of Independent Claims 1, 15 and 29 under 35 U.S.C. § 103 (a)

At page 2 of the Office Action dated 11/12/2008, the Examiner withdrew the rejections of claims 1, 15, and 29 under 35 U.S.C. 103(a) as being unpatentable by Chandrashekhar in view of Giniger and concedes that Chandrashekhar, alone or in combination with Giniger, does not disclose at least the limitation of “hosting said communication session over a third PHY channel, said third PHY channel established between said access point and said originating access device,” as recited by the Applicant in independent claims 1, 15, and 29.

The Examiner has introduced Weatherspoon to teach the deficiencies of Chandrashekhar and Giniger. The Examiner is referred to the Applicant's arguments in the Examiner's Response to Arguments above, namely, that Weatherspoon, in step 326, does not disclose or suggest that the enabled access to wired LAN 120 (i.e., the alleged third PHY channel" is established between the AP 102A and the wired LAN 120 (see Weatherspoon col. 5, lines 29-37), and not between the AP 102A and the wireless device 106A (i.e., the alleged "originating access device").

In this regard, the Applicant maintains that Weatherspoon at least does not overcome the deficiencies of Chandrashekhar and Giniger by disclosing or suggesting the claimed "said third PHY channel established between said access point and said originating access device," as alleged by the Examiner.

Therefore, based on the foregoing arguments, the Applicant maintains that Weatherspoon does not overcome the deficiencies of Chandrashekhar and Giniger and a prima facie case of obviousness has not been established by the combination of Chandrashekhar, Giniger and Weatherspoon to reject the Applicant's claim1. The Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. 103(a) be withdrawn. Likewise, independent claims 15 and 29 are submitted to be allowable for the same rationale of independent claim 1.

Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1, 15, and 29.

A(2). Rejection of Dependent Claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 15 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Chandrashekhar and Giniger in view of Weatherspoon has been overcome and requests that the rejection be withdrawn. Additionally, claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42 depend directly or indirectly from independent claims 1, 15 and 29, respectively, and are, consequently, also respectfully submitted to be allowable.

Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42.

B. The Proposed Combination of Chandrashekhar, Giniger, Weatherspoon and He et al. Does Not Render Claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 Unpatentable

The Applicant now turns to the rejection of claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 as being unpatentable under 35 U.S.C. §103(a) over Chandrashekhar and Giniger in view of He et al. The Applicant notes that the proposed combination of Chandrashekhar, Giniger, Weatherspoon and He et al. forms the basis for all of the pending rejections.

Application No. 10/658,310
Reply to Office Action of November 12, 2008

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 15 and 29 under 35 U.S.C. § 103a as being unpatentable over Chandrashekhar and Giniger in view of Weatherspoon has been overcome. Since claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 are dependant directly or indirectly from independent claims 1, 15, and 29, respectively, the Applicant respectfully submits that the rejection of the dependent claims consequently be withdrawn and the claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 to be allowable.

Application No. 10/658,310
Reply to Office Action of November 12, 2008

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-42 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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